



Department of Justice

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JUSTICE DEPARTMENT REQUIRES TWO WEST VIRGINIA HOSPITALS TO END ILLEGAL MARKET-ALLOCATION AGREEMENTS

West Virginia Certificate-of-Need Authority Does Not Shield Agreements from Federal Antitrust Review

WASHINGTON, D.C. – The Department of Justice announced today that it will require two hospitals in southern West Virginia--Bluefield Regional Medical Center, Inc. (BRMC) and Princeton Community Hospital Association, Inc. (PCH)--to terminate their illegal agreements that allocated cancer services to PCH and cardiac-surgery services to BRMC. The Department said that requiring the hospitals to end the agreements is necessary to restore competition and the options available to consumers when selecting a hospital to provide medical care.

The Department's Antitrust Division filed a lawsuit today in the U.S. District Court for the Southern District of West Virginia, challenging the agreements between BRMC and PCH as a violation of Section 1 of the Sherman Act. At the same time, the Department filed a proposed consent decree that, if approved by the court, would resolve the lawsuit and the Department's competitive concerns. A competitive impact statement was filed simultaneously with the court.

According to the complaint, BRMC, PCH, and St. Luke's Hospital, a hospital owned by PCH, are the only general acute-care hospitals in Mercer County, West Virginia. On January 30, 2003, BRMC and PCH entered into two agreements in which BRMC agreed not to offer most cancer services and PCH agreed not to offer cardiac-surgery services in six West Virginia counties and three Virginia counties. BRMC and PCH subsequently made joint filings with the

state of West Virginia to request certificates of need (CON) for BRMC to provide cardiac-surgery services and for PCH to provide cancer services. A CON is a permit required to enter certain areas of the health care market; generally, the applicant must demonstrate to a state authority that there is an unmet need for its services. BRMC and PCH had been head-to-head competitors in cancer services and potential competitors in cardiac-surgery services. The complaint alleges that the agreements effectively allocated markets for cancer and cardiac-surgery services and restrained competition to the detriment of consumers.

“It is essential to maintain competition and choice in this important industry so that consumers will be provided with the best possible options for their health care needs,” said J. Bruce McDonald, Deputy Assistant Attorney General in the Department’s Antitrust Division. “The Sherman Act clearly prohibits hospitals and other competitors from engaging in this type of market allocation scheme.”

The state action doctrine provides immunity from federal antitrust liability where a defendant can show that the challenged restraint is a clearly articulated state policy and that the state actively supervises the challenged conduct. As stated in the competitive impact statement, no state action shields the BRMC-PCH agreements from federal antitrust review. The state action doctrine does not apply in this case, where state law gives an agency only limited powers, which in this case the agency did not purport to exercise, the Department said.

The proposed consent decree annuls the agreements and prohibits BRMC and PCH from entering into any agreement that allocates any cancer or cardiac-surgery service, market, territory, or customer. In addition, the proposed consent decree prevents BRMC and PCH from entering into any agreement that restricts a health care facility from obtaining a certificate of need relating to cancer services or cardiac surgery or otherwise restricts a health care facility

from taking actions related to providing cancer services or cardiac surgery without the prior approval of the United States. Finally, BRMC and PCH are prohibited from entering into any agreement with each other concerning cancer services or cardiac surgery without the prior approval of the United States.

As required by the Tunney Act, the proposed consent decree, along with the Department's competitive impact statement, will be published in the *Federal Register*. Any person may submit written comments concerning the proposed decree during a 60-day comment period to Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the court may enter the consent decree upon a finding that it serves the public interest.

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